IN THE HIGH COURT OF JUDICATURE AT BOMBAY

SPECIAL ORIGINAL JURISDICTION

COMPANY SECRETARIES REFERENCE NO.2 OF 2003

The Institute of Company Secretaries
of India, an statutory Institute
established under the Company
Secretaries Act, 1980 and having
its Head Office at 'ICSI House',
22, Institutional Area, Lodi Road,
New Delhi 110 003. Petitioner

vs.

1. Sharad Gawade of Mumbai,
Indian Inhabitant, aged about
44 years, having his address
at 303, Timmy Arcade Makwana
Road, Behind S.M. Dyechem,
Andheri Kurla Road, Marol Naka,
Andheri East, Mumbai 400 059.

2. The Union of India,
through the Secretary, Ministry,
of Finance,
Department of Company
Affairs, New Delhi. Respondents

Mr. G. V. Aiman for the petitioner.
Mr.Shekhar Shetye i/b. Mr.B.B. Parekh for respondent no.1.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ

DATED : 16th August 2004

ORAL JUDGMENT (PER R. M. LODHA,J.):

This is a Company Secretary Reference under Section 21(5) of the Company Secretaries Act, 1980 (for short, 'Act of 1980').

2. Sharad Gawade (first respondent) was admitted as an associate member of the Institute of Company

Secretaries of India from 10th January 1992. He was admitted as fellow member of the Institute on 10th December 1997.

3. Upon the information being received by the Institute that the first respondent had issued a booklet/brochure to Companies/Banks/Chartered Accountants and had also opened a branch office at Aurangabad without being in the separate charge of a member of the Institute, show cause notice was issued to the first respondent as to why suo motu inquiry be not instituted against him for violation of clauses (6) and (7) of Part I of First Schedule and clause (1) of Part II of Second Schedule of the Act of 1980. The first respondent submitted his reply on 1st November 2000. He admitted that he issued the offending booklet/brochure and apologised for the lapse on his part. As regards the opening of branch office at Aurangabad without being in separate charge of a member of the Institute, the first respondent submitted that he had discussed the possible arrangement for Aurangabad office with Mr. R. T. Rajguru who was practising Company Secretary and he has given his consent to act as partner and incharge of Bombay Office whereas the first respondent would be incharge of Aurangabad office. He enclosed consent letter of Shri R. T. Rajguru and submitted that he would complete

necessary formalities on hearing the respondent. He, however, admitted his lapse and apologised for the same. The matter was ultimately referred to the disciplinary committee as the Council was of the prima facie opinion that the first respondent was guilty of professional misconduct. Before the disciplinary committee, the first respondent did not contest the charge and regretted his lapses and submitted that he would be careful and cautious in future. The offending brochures have been withdrawn by him. The disciplinary committee found the first respondent guilty of professional misconduct under clauses (6) and (7) of Part I of First Schedule and clause (1) of Part II of Second Schedule read with Section 37 of the Act of 1980 and forwarded its report to the Council. The Council sought representation from the first respondent against the finding of the disciplinary committee and permitted him to appear personally before the Council if he so desired. The Council considered the finding of the disciplinary committee, written representation as well as oral submission of the first respondent and the available material and held that the first respondent was guilty of professional misconduct under clause (1) of Part II of Second Schedule and recommended to this Court that the first respondent be reprimanded.

4. In view of the admission by the first respondent of

his lapses that amounted to professional misconduct, it is not necessary to deal with the matter at length. Suffice it to recapitulate the findings recorded by the disciplinary committee:

> "1. The respondent had opened a branch office at Aurangabad without being in the separate charge of a member of the Institute in contravention of provisions of the Company Secretaries Act, 1980.
>
> 2. The respondent in his statement on oath before the Disciplinary Committee admitted his guilt of having issued the impugned booklet/ brochure to companies/banks/chartered Accountants, etc.
>
> 3. The respondent stated that Brochure on record have been withdrawn/not being published. He also submitted by way of an affidavit that the mistake was committed inadvertently and he regretted for the same and assured that he would take care in future and requested that he be pardoned for the lapse on his part.
>
> 4. The respondent pleaded guilty and stated that he was new to the profession and was not aware of the exact rules and regulations. Expressed regrets and stated that he would be careful and cautious in future."

5. The said findings have been accepted by the Council and there is no challenge to the aforesaid findings by the Counsel for the first respondent before us.

6. As regards the findings recorded by the disciplinary committee and accepted by the Council that the first respondent was guilty of professional misconduct under

clauses (6) and (7) of Part I of the First Schedule of the Act of 1980, the Council passed an order of reprimand. In respect of the professional misconduct under clause (1) of Part II of the Second Schedule read with section 37 of the Act, the Council has recommended that the first respondent be reprimanded. Initially we thought that the punishment recommended by the Council was too lenient and needed to be enhanced, but on deeper thoughtful consideration, in view of the candid and honest admission of the guilt by the first respondent and the assurance that in future he would not indulge in such professional misconduct, we thought that the order of reprimand shall meet the ends of justice.

7. We, accordingly, confirm the finding of the disciplinary committee and accepted by the Council of the professional misconduct committed by the first respondent under clause (1) of Part II of the Second Schedule of the Act of 1980 and pass the order of reprimand.

Certified copy expedited.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)